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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Manuel Lorenzo Godínez,

10 Plaintiff,

11 vs.

12 Dora Schriro, et al.,

13 Defendants.

) No. CV 08-8071-PCT-MHM (JCG)

) **ORDER**

14

15 Plaintiff Manuel Lorenzo Godínez, who is confined in the Arizona State Prison

16 Complex-Tucson, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and

17 an Application to Proceed *In Forma Pauperis*. The Court will dismiss the Complaint with

18 leave to amend.

19 **I. Application to Proceed *In Forma Pauperis* and Filing Fee**

20 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.

21 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).

22 The Court will assess an initial partial filing fee of \$10.03. The remainder of the fee will be

23 collected monthly in payments of 20% of the previous month's income each time the amount

24 in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate

25 Order requiring the appropriate government agency to collect and forward the fees according

26 to the statutory formula.

27 **II. Statutory Screening of Prisoner Complaints**

28 The Court is required to screen complaints brought by prisoners seeking relief against

1 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
 2 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
 3 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
 4 be granted, or that seek monetary relief from a defendant who is immune from such relief.
 5 28 U.S.C. § 1915A(b)(1), (2). If the Court determines that a pleading could be cured by the
 6 allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint
 7 before dismissal of the action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000)
 8 (*en banc*).

9 The Court should not, however, advise the litigant how to cure the defects. This type
 10 of advice “would undermine district judges’ role as impartial decisionmakers.” Pliler v.
 11 Ford, 542 U.S. 225, 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide
 12 whether the court was required to inform a litigant of deficiencies). Plaintiff’s Complaint
 13 will be dismissed for failure to state a claim, with leave to amend because the Complaint may
 14 possibly be saved by amendment.

15 **III. Complaint**

16 Plaintiff names Arizona Department of Corrections Director Dora Schriro and Chief
 17 of Security Captain Richard Haggard as Defendants in the Complaint.

18 Plaintiff alleges two grounds for relief in the Complaint. In Count I, Plaintiff claims
 19 that his Eighth Amendment rights were violated when he was assaulted after Sgt. Nabers and
 20 Lt. Palmer ordered a third inmate to be housed in Plaintiff’s cell, even though the third
 21 inmate threatened to assault Plaintiff and his cellmate.

22 In Count II, Plaintiff claims that his Eighth Amendment rights were violated when,
 23 after the incident described in Count I, he was wrongfully convicted of a disciplinary
 24 violation. As a result of the disciplinary conviction, Plaintiff alleged that he lost good time
 25 credits. Plaintiff seeks money damages and the restoration of his good time credits.

26 **IV. Failure to State a Claim**

27 **A. Failure to Link Injuries with Named Defendants**

28 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific

injury as a result of specific conduct of a defendant and show an affirmative link between the injury and the conduct of that defendant. Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976). To state a claim against a supervisory official, the civil rights complainant must allege that the official personally participated in the constitutional deprivation or that a supervisory official was aware of widespread abuses and with deliberate indifference to the inmate's constitutional rights, failed to take action to prevent further misconduct. King v. Atiyeh, 814 F.2d 565, 568 (9th Cir. 1987); see Monell v. New York City Department of Social Services, 436 U.S. 658, 691 (1978). There is no *respondeat superior* liability under § 1983, and therefore, a defendant's position as the supervisor of persons who allegedly violated Plaintiff's constitutional rights does not impose liability. Monell, 436 U.S. 658; Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

Plaintiff does not allege that Defendants Schriro and Haggard personally participated in the deprivation of Plaintiff's constitutional rights, were aware of widespread abuses and failed to act, or that they formed policies that resulted in Plaintiff's injuries. Plaintiff has therefore failed to state a claim against either named Defendant. Although Plaintiff has identified other corrections officers directly responsible for his injuries in both Counts I and II, Plaintiff has not named those corrections officers as Defendants in the Complaint.

B. Count II—Disciplinary Proceedings

A prisoner's claim for damages is not cognizable under 42 U.S.C. § 1983 if "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence," unless the prisoner demonstrates that the conviction or sentence has previously been reversed, expunged, or otherwise invalidated. Heck v. Humphrey, 512 U.S. 477, 486 (1994). If judgment in favor of Plaintiff regarding the denial of due process in a prison disciplinary proceeding would invalidate the deprivation of good time credits, the claim is barred under Heck unless Plaintiff can show that the disciplinary conviction has been overturned. See Edwards v. Balisok, 520 U.S. 641, 648 (1997).

1 In Count II, Plaintiff alleges that he was denied due process during disciplinary
2 proceedings and was wrongfully deprived of good time credits. In his request for relief,
3 Plaintiff asks that his good time credits be restored. Because Plaintiff has not shown that his
4 disciplinary conviction has been overturned, his claims are barred by Heck and Balisok, and
5 must be dismissed.

6 **V. Leave to Amend**

7 For the foregoing reasons, Plaintiff's Complaint will be dismissed for failure to state
8 a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a first
9 amended complaint to cure the deficiencies outlined above. The Clerk of Court will mail
10 Plaintiff a court-approved form to use for filing a first amended complaint. If Plaintiff fails
11 to use the court-approved form, the Court may strike the amended complaint and dismiss this
12 action without further notice to Plaintiff.

13 Plaintiff must clearly designate on the face of the document that it is the "First
14 Amended Complaint." The first amended complaint must be retyped or rewritten in its
15 entirety on the court-approved form and may not incorporate any part of the original
16 Complaint by reference. Plaintiff may include only one claim per count.

17 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
18 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
19 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
20 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
21 complaint is waived if it is not raised in a first amended complaint. King, 814 F.2d at 567.

22 **VI. Warnings**

23 **A. Release**

24 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.
25 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay
26 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result
27 in dismissal of this action.
28

1 **B. Address Changes**

2 Plaintiff must file and serve a notice of a change of address in accordance with Rule
3 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
4 relief with a notice of change of address. Failure to comply may result in dismissal of this
5 action.

6 **C. Copies**

7 Plaintiff must submit an additional copy of every filing for use by the Court. See
8 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
9 to Plaintiff.

10 **D. Possible “Strike”**

11 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff fails
12 to file an amended complaint correcting the deficiencies identified in this Order, the dismissal
13 will count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g). Under the 3-
14 strikes provision, a prisoner may not bring a civil action or appeal a civil judgment *in forma*
15 *pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while
16 incarcerated or detained in any facility, brought an action or appeal in a court of the United
17 States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim
18 upon which relief may be granted, unless the prisoner is under imminent danger of serious
19 physical injury.” 28 U.S.C. § 1915(g).

20 **E. Possible Dismissal**

21 If Plaintiff fails to timely comply with every provision of this Order, including these
22 warnings, the Court may dismiss this action without further notice. See *Ferdik*, 963 F.2d at
23 1260-61 (a district court may dismiss an action for failure to comply with any order of the
24 Court).

25 **IT IS ORDERED:**

- 26 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. #3) is **granted**.
27 (2) As required by the accompanying Order to the appropriate government agency,
28 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$10.03.

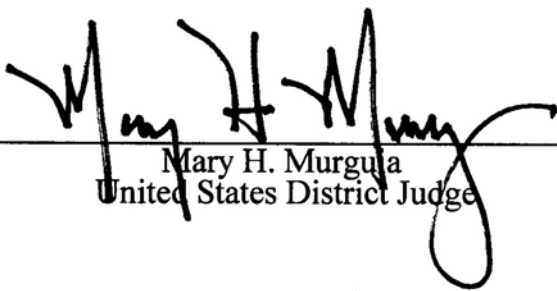
1 (3) The Complaint (Doc. #1) is **dismissed** for failure to state a claim. Plaintiff has
2 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
3 this Order.

4 (4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of Court
5 must, without further notice, enter a judgment of dismissal of this action with prejudice that
6 states that the dismissal counts as a “strike” under 28 U.S.C. § 1915(g).

7 (5) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil
8 rights complaint by a prisoner.

9 DATED this 22nd day of July, 2008.

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Mary H. Murgula
United States District Judge

**Instructions for a Prisoner Filing a Civil Rights Complaint
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. The Filing Fee. The filing fee for this action is \$350.00. If you are unable to immediately pay the filing fee, you may request leave to proceed *in forma pauperis*. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$350 filing fee or the application to proceed *in forma pauperis* to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed *in forma pauperis*). Each original document (except the initial complaint and application to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. See Fed. R. Civ. P. 5(a), (d). Any document received by the Court that does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____

Address: _____

Attorney for Defendant(s)

(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court before any defendant has answered your original complaint. See Fed. R. Civ. P. 15(a). After any defendant has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “Bivens v. Six Unknown Federal Narcotics Agents” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. **Counts.** You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**
2. **Issue Involved.** Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked “Other,” you must identify the specific issue involved.
3. **Supporting Facts.** After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.
4. **Injury.** State precisely how you were injured by the alleged violation of your rights.
5. **Administrative Remedies.** You must exhaust any available administrative remedies before you file a civil rights complaint. See 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

<p>_____,) (Full Name of Plaintiff) Plaintiff,)) vs.) CASE NO. _____) (To be supplied by the Clerk) (1) _____,) (Full Name of Defendant)) (2) _____,)) CIVIL RIGHTS COMPLAINT (3) _____,) BY A PRISONER) (4) _____,)) Defendant(s).)) <input type="checkbox"/> Check if there are additional Defendants and attach page 1-A listing them.)) <input type="checkbox"/> Original Complaint) <input type="checkbox"/> First Amended Complaint) <input type="checkbox"/> Second Amended Complaint</p>	
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A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:
 - ☐ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
 - ☐ 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
 - ☐ Other: _____

2. Institution/city where violation occurred: _____

B. DEFENDANTS

1. Name of first Defendant: _____. The first Defendant is employed as:

(Position and Title) at _____
(Institution)
2. Name of second Defendant: _____. The second Defendant is employed as:

(Position and Title) at _____
(Institution)
3. Name of third Defendant: _____. The third Defendant is employed as:

(Position and Title) at _____
(Institution)
4. Name of fourth Defendant: _____. The fourth Defendant is employed as:

(Position and Title) at _____
(Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

COUNT III

1. State the constitutional or other federal civil right that was violated: _____.
2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
☐ Basic necessities ☐ Mail ☐ Access to the court ☐ Medical care
☐ Disciplinary proceedings ☐ Property ☐ Exercise of religion ☐ Retaliation
☐ Excessive force by an officer ☐ Threat to safety ☐ Other: _____.
3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

_____.
4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

_____.
5. **Administrative Remedies.**
- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
- b. Did you submit a request for administrative relief on Count III? ☐ Yes ☐ No
- c. Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or
other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.